

IN THE UNITED STATES DISTRICT COURT  
FOR DISTRICT OF PUERTO RICO

JOSE M. LORIE VELASCO, et al

Plaintiffs

v

KMART CORPORATION, et al

Defendants

CIVIL NO.: 1998-1867 (PG)

**MOTION FOR DISMISSAL WITH PREJUDICE**

TO THE HONORABLE COURT:

COMES NOW defendant Kmart Corporation ("Kmart"), through the undersigned counsel, and very respectfully state and pray as follows:

1. The parties reached a confidential agreement which disposes of all claims against defendant, Kmart Corporation ("Kmart") in the instant case. A copy of said agreement, which was originally drafted on February 8<sup>th</sup>, 2005 and re-drafted as per Plaintiffs' request on February 11<sup>th</sup> and February 15<sup>th</sup>, 2005, is being filed under seal on this same date, as it was executed on February 22<sup>nd</sup>, 2005 by plaintiff Heidi R. Berríos and plaintiff Rolando José Santiago Berríos.
2. On February 11<sup>th</sup>, 2005, the parties held a conference call wherein, plaintiff José M. Lorié-Velasco, his attorney, Mr. José F. Quetglas-Jordán, Esq. and the undersigned, through the speaker phone, discussed the settlement and release agreement drafted. At the time, plaintiff Lorié-Velasco manifested that he agreed with the terms and conditions set forth in the agreement. See, Exhibit 1, a letter dated March 2<sup>nd</sup>, 2005 sent by Mr. Quetglas-Jordán to the undersigned. During the telephone conference held on

February 11<sup>th</sup>, 2005, the only change requested by Mr. Quetglas was that the agreement be prepared for the signatures of plaintiffs Lorié-Velasco, Heidi Berríos and Rolando Santiago-Berríos, instead of his own signature. Id.

3. Further to the telephone conference, the settlement agreement was redrafted as per plaintiffs' attorney's request. Subsequently, on February 22<sup>nd</sup>, 2005, plaintiffs Heidi Berríos and Rolando Santiago-Berríos executed the settlement agreement. On that date, the case was, therefore, settled. See, Exhibit 1.

4. After the settlement of the case and the execution of the agreement and release by plaintiff Berríos and plaintiff Santiago-Berríos, plaintiff Lorié-Velasco did not execute the settlement agreement. Id. As informed to the Honorable Court during the status conference held today, to date, plaintiff Lorié-Velasco has not signed the agreement and release.

5. Nevertheless, in accordance with the terms of the settlement agreement reached on February 22<sup>nd</sup>, 2005 the appearing party hereby moves for the entry of judgment pursuant to the terms and conditions of the settlement agreement and providing for the dismissal with prejudice of all claims and causes of action that plaintiffs may have against Kmart arising from the incidents alleged in the Complaint.

6. The parties have further agreed that each will bear their respective costs and attorney's fees.

7. Finally, the parties agreed to respectfully request that this Honorable Court to retain jurisdiction over the case for the limited purpose of enforcing the terms of their Confidential Agreement, if necessary, and subject to the continuance of the automatic stay imposed by 11 U.S.C. § 362(a) which remains in effect with respect to any and all

actions to collect or execute on any final judgment or settlement against Kmart.

WHEREFORE, defendant very respectfully request this Honorable Court to enter judgment in accordance with the terms and conditions of the confidential agreement and dismissing with prejudice all of plaintiffs' claims against Kmart, without the imposition of costs or attorney's fees and that it retains jurisdiction for the enforcement, if necessary, of the confidential agreement signed by plaintiffs and defendant, subject to the continuance of the automatic stay imposed by 11 U.S.C. § 362(a) as to the collection or execution on any final judgment or settlement against defendant.

**Certificate of Service:** It is hereby certified that on this date we electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **José Quetglas Jordán, Esq.**, Quetglas Law Office, P.O. Box 16606, San Juan, Puerto Rico, 00907-6606.

In San Juan, Puerto Rico, this 10<sup>th</sup> day of May, 2005.

**SANCHEZ BETANCES, SIFRE, MUÑOZ  
NOYA & RIVERA, P.S.C.**

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s/Marta E. Vila Baez  
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